

## **REMARKS / DISCUSSION OF ISSUES**

The present amendment is submitted in response to the Non-Final Office Action mailed March 30, 2011. In view of the remarks to follow, reconsideration and allowance of this application are respectfully requested.

### ***Status of the Claims***

Upon entry of the present amendment, claims 4-10 will remain pending in this application, with claims 4-7 being in independent form. Claims 4-7 have been amended. . Applicants respectfully submit that no new matter is added by the present amendments.

### ***Claim Rejections under 35 USC 112***

In the Office Action, Claims 4-7 were rejected under 35 USC 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, Claims 4-7 were rejected for reciting the phrase “significant difference”. Claims 4-7 have been amended in a manner which is believed to overcome the rejections noted by the Examiner. Accordingly, withdrawal of the rejections of claims 4-7 is respectfully requested.

### ***Rejections under 35 U.S.C. §101***

Claims 5-7 stand rejected under 35 U.S.C. §101 as being allegedly directed to non-statutory subject matter. As per claims 5-6, these claims are directed to statutory subject matter only if at least one of the claimed elements of the system is a physical part of the device. The rejection is understood to be based on the premise that the specification is silent as to actual definitions for claim elements (e.g., a verifier; timer) as directed to hardware components; therefore applying the broadest reasonable interpretation, ‘verifier, timer’ could be equally implemented as either software modules or programs, thus claims 4-5 lack the necessary structure element; therefore claims 5-6 fail to fall within one of the four statutory categories of invention recited in 35 U.S.C. §101 process, machine, manufacture, and composition of matter. Because of the above reasons, claims 5-6 are directed to non-statutory subject matter. Claims 5-7 have been amended in a manner which is believed to overcome the stated rejections. Specifically, Claims 5-7 recite, *a storage medium for storing the actual*

*response times for limiting subsequent access of the unauthorized users or notifying an external source of the unauthorized users.* It is respectfully submitted that Claims 5-7 are directed to statutory subject matter because at least one of the claimed elements of the system is a physical part of a device. Accordingly, withdrawal of the rejections of claims 5-7 is respectfully requested.

***Rejections under 35 USC 103***

I. Claims 4-7 and 9-10 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,197,563 to Sheymov et al. (“Sheymov”) in view of U.S. Patent Application No. 2002/0147930 to Pritchard et al. (“Pritchard”), and further in view of U.S. Patent Application No. 2009/0240721 to Giacalone et al (“Giacalone”). The rejections are respectfully traversed.

In order to establish a *prima facie* case of obviousness, the cited prior art in combination must show all of the claimed limitations. M.P.E.P. §2141. Here, there are elements in independent claim 1, as amended, which are not shown even in a combination of the cited prior art.

Therefore, the following limitations of independent claims 4-7, as amended, are not found even in a combination of the record. That is, Applicants’ independent Claims 4-7 have been amended to recite features not disclosed or suggested by Sheymov, Pritchard and Giacalone, taken alone or in any proper combination. In particular, neither Sheymov, Pritchard and Giacalone, taken alone or in any proper combination, disclose or suggest,

*“...a timer apparatus operably coupled to the verifier apparatus for measuring response times between a request for content from a first source and a response from the unknown second source...” [Emphasis Added]*

Applicants have amended Claims 4-7 to more clearly and precisely recite that the response times are measured between **a request for content** from a first source and a

response from an unknown second source. Applicants respectfully submit that the applied art (Sheymov / Pritchard / Giacalone) fail to teach or suggest the amended recitations of Claims 4-7. In the Office Action, Pritchard is cited for curing a deficiency in Sheymov in addressing the above claim limitation. Specifically, Pritchard is cited for disclosing the authorization of **computer access requests (i.e., password attempts)** based upon stored predetermined time intervals. Applicant's amended claims now more particularly and precisely recite that the request is not a "**computer access**" request, as taught in Pritchard, but is rather a "**content request**", as claimed.

Applicants have further amended Claims 4-7 to more clearly and precisely recite that the verifier apparatus determines an authorization to process protected material to facilitate an assessment by the verifier apparatus of the physical proximity of the source of a response, based on the measured response times.

*"...a verifier apparatus for determining an authorization to process protected material **to facilitate an assessment by the verifier apparatus of the physical proximity of the source of a response**, based on an assessment of actual response times associated with one or more responses received from an unknown second source to one or more requests issued from a first source to the unknown second source..."* [Emphasis Added]

Pritchard provides an improved password that prevents unauthorized access to a computer system. A password program compares a received password attempt to a stored password. The structure of the stored password comprises a time envelope that comprises at least one password segment that comprises 1) an entry event, 2) a predetermined time interval, 3) a terminating signal to mark the end of the password segment. The time envelope is included as an element of the password. The time envelope is measured from the time of an initial entry event (or signal) to the time that a terminating signal is detected. *See* Pritchard, par. 9-10.

In contrast to Pritchard, Applicant's system and method are directed to measuring a response time associated with a response received from an unknown second source to a content request issued from a first source to ascertain the physical proximity of the source of

the response. Hence, a round trip transit time is measured between a request and a corresponding response. This allows the verifier to determine the physical proximity of the unknown second source based on temporal proximity.

It should be understood that one key difference between Pritchard and Applicant's invention is that the triggering event is initiated by a first (verifying) party, while the triggering event of Pritchard is initiated by the party to be authorized.

One further distinguishing difference is that Pritchard does not teach or suggest ascertaining physical proximity based on temporal proximity, but instead ascertains whether or not the time structure of a received password attempt favorably compares to a pre-stored time structure model of the password. Applicants do not utilize a model structure of an expected response for purposes of comparison with a received response. Instead, Applicants compare a received response time with an expected response time to determine if the received response conforms to a physical boundary distinguishing false and actual responders.

Based on the foregoing, it is respectfully submitted that the cited and applied references do not teach the further features added to claims 4-7. Hence claims 4-7 are allowable and claims 9-10 are allowable, at least by virtue of their respective dependence from claim 7.

II. Claims 4-7 and 9-10 were rejected under 35 U.S.C. §103(a) as being unpatentable over Sheymov-Pritchard-Giacalone in view of U.S. Patent No. 7,412,594 to Bridge. The rejection is respectfully traversed.

***Claim 8 is allowable***

As explained above, the cited portions of Sheymov-Pritchard-Giacalone do not disclose or suggest each and every element of claim 7 from which claim 8 depends. Bridge does not disclose each of the elements of claim 7 that are not disclosed by Sheymov-Pritchard-Giacalone. Hence claim 7 is allowable. Claim 8 depends from independent Claim

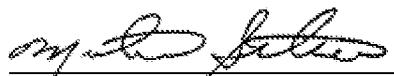
7 and therefore contains the limitations of Claim 7 and is believed to be in condition for allowance for at least the same reasons given for Claim 7. Accordingly, withdrawal of the rejection under 35 U.S.C. §103(a) and allowance of Claim 8 is respectfully requested.

### **Conclusion**

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims presently pending in the application, namely, Claims 4-10 are believed to be in condition for allowance and patentably distinguishable over the art of record.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call Mike Belk, Esq., Intellectual Property Counsel, Philips Electronics North America, at 914-333-9643.

Respectfully submitted,



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